

ESTTA Tracking number: **ESTTA703450**

Filing date: **10/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062223
Party	Defendant NuGene Inc.
Correspondence Address	NUGENE INC 720 PAULARINO AVE , SUITE 260 COSTA MESA, CA 92626 UNITED STATES
Submission	Answer
Filer's Name	Michael Bell
Filer's e-mail	mlbell58288@gmail.com, Asaltzman@og-law.com, Dpardue@og-law.com, jill@doctorslawgroup.com
Signature	/Michael Bell/
Date	10/20/2015
Attachments	NuEye_Cancel_ANSWER_92062223.pdf(152977 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NSE PRODUCTS, INC.,	Cancellation No.: 92062223
Petitioner,	Trademark: NUEYE
v.	Reg. No.: 4656152
NUGENE, INC.,	
Respondent.	

**ANSWER AND AFFIRMATIVE DEFENSES OF NUGENE, INC.
TO NSE PRODUCTS, INC.'S PETITION FOR CANCELLATION**

COMES NOW NuGene, Inc. (“NuGene”) and responds to the Petition for Cancellation (hereinafter described as the “Petition”) filed by NSE Products, Inc. (“NSE Products”) regarding the federally registered trademark NUEYE, Registration No. 4656152, as follows:

AFFIRMATIVE DEFENSES

FIRST DEFENSE

NSE Products’s petition fails because the marks held by NSE Products are not sufficiently similar to the NUEYE mark to create a likelihood of confusion.

SECOND DEFENSE

NSE Products’s petition fails because the marks held by NSE Products are not sufficiently well-known or widely recognized to be considered famous under 15 U.S.C. § 1125(c).

THIRD DEFENSE

NSE Products’s petition fails because the marks held by NSE Products are insufficiently distinctive to support a claim of dilution.

FOURTH DEFENSE

NSE Products's petition fails because the marks held by NSE Products are not sufficiently similar to the NUEYE mark to create a likelihood of dilution.

FIFTH DEFENSE

NSE Products's cancellation is barred by waiver. NuGene has used the mark NUEYE in commerce since April 2014, and the NUGENE mark was registered by the U.S. Patent and Trademark Office, after being published for the required period, on December 16, 2014. During that time, NSE Products failed to take substantive action to assert the claims upon which it bases its current cancellation.

SIXTH DEFENSE

Without waiving any defenses and without admitting any liability, NuGene reserves the right to seek amendment to restrict the identified goods for which the NUEYE mark has been registered, pursuant to 15 U.S.C. sec. 1068, if such amendment would assist in avoiding a finding of likelihood of confusion.

ANSWER

NuGene responds to the numbered paragraphs in the Petition for Cancellation, as follows:

1.

NuGene neither admits nor denies the allegations contained in Paragraph 1 of the Petition, as it is currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

2.

NuGene neither admits nor denies the allegations contained in the first sentence of Paragraph 2 of the Petition, as it is currently without knowledge or information sufficient to form

a belief as to the truth of the allegations. NuGene denies the allegations contained in the second sentence of Paragraph 2.

3.

NuGene admits that multiple marks belonging to NSE Products and described in the Petition were registered, and allegedly used in commerce, prior to the date that NuGene registered the NUEYE mark and prior to the date that NuGene began using the NUEYE mark in commerce. NuGene neither admits nor denies the remaining allegations contained in Paragraph 3 of the Petition, as it is currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

4.

NuGene admits that NSE Products has the federal trademark registrations described in Paragraph 4 of the Petition.

5.

NuGene neither admits nor denies the allegations contained in Paragraph 5 of the Petition, as it is currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

6.

NuGene admits that NSE Products filed an application, which is pending, for registration of a proposed trademark, as described in Paragraph 6 of the Petition.

7.

NuGene admits the allegations contained in Paragraph 7 of the Petition.

8.

NuGene admits that some of the marks listed in Paragraph 8 of the Petition are incontestable but denies that all of the marks listed in Paragraph 8 are incontestable.

9.

NuGene neither admits nor denies the allegations contained in Paragraph 9 of the Petition, as it is currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

10.

NuGene denies the allegations contained in Paragraph 10 of the Petition.

11.

NuGene admits the allegations contained in Paragraph 11 of the Petition.

12.

NuGene admits the allegations contained in Paragraph 12 of the Petition.

13.

NuGene denies the allegations contained in Paragraph 13 of the Petition.

14.

NuGene admits the allegations contained in Paragraph 14 of the Petition.

COUNT I
Likelihood of Confusion
15 U.S.C. § 1052(d)

15.

NuGene re-alleges and reasserts its responses to paragraphs 1 through 14 of the Petition, as if fully set forth herein.

16.

NuGene admits that NSE Products used one or more of the NU SKIN marks in connection with skin care products— including moisturizers, peels, masks, scrubs, cleansers, sun protection, and cosmetics—prior to the date that NUEYE was registered as a mark with the U.S. Patent and Trademark Office and prior the date of first use for the NUEYE mark. However, to the extent the allegations assert that NSE Products continuously used one or more of the NU SKIN marks in connection with skin care products since the alleged dates of first use, NuGene neither admits nor denies those allegations, as it is currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

17.

NuGene denies the allegations contained in Paragraph 17 of the Petition.

COUNT II
Likelihood of Dilution
15 U.S.C. § 1125(c)

18.

NuGene re-alleges and reasserts its responses to paragraphs 1 through 17 of the Petition, as if fully set forth herein.

19.

NuGene denies the allegations contained in Paragraph 19 of the Petition.

20.

NuGene denies the allegations contained in Paragraph 20 of the Petition.

RESPONSE TO PRAYER FOR RELIEF

21.

To the extent that the paragraphs at the conclusion of the Petition, beginning “WHEREFORE,” contain any allegations to which NuGene must respond, they are hereby denied.

WHEREFORE, NuGene, Inc. respectfully asks that the Trademark Trial and Appeal Board deny NSE Products, Inc.’s Petition and decline to cancel NuGene, Inc.’s registered mark: NUEYE, Registration No. 4656152.

This 20th day of October, 2015.

/MICHAEL BELL/

MICHAEL BELL
California Bar No. 273676
Counsel for Defendant NuGene, Inc.

2931 Hickory Place
Fullerton, CA 92835
(714) 488-7119
mlbell58288@gmail.com

OWEN, GLEATON, EGAN, JONES & SWEENEY, LLP
DAVID L. PARDUE
Georgia Bar No. 561217
AARON I. SALTZMAN
Georgia Bar No. 470763
Counsel for Defendant NuGene, Inc.

1180 Peachtree Street Northeast, Suite 3000
Atlanta, Georgia 30309
(404) 688-2600 (Telephone)
(404) 525-4347 (Fax)
Dpardue@og-law.com
Asaltzman@og-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES OF NUGENE, INC. has been served on counsel of record for all parties by mailing said copy, today, via First Class Mail with postage pre-paid, to:

Hope Hamilton
hihamilton@hollandhart.com
H. Matthew Horlacher
mhorlacher@hollandhart.com

HOLLAND & HART LLP
P.O. Box 11583
Salt Lake City, Utah 84110

This 20th day of October, 2015.

/MICHAEL BELL/

MICHAEL BELL
California Bar No. 273676
Counsel for Defendant NuGene, Inc.

2931 Hickory Place
Fullerton, CA 92835
(714) 488-7119
mlbell58288@gmail.com

OWEN, GLEATON, EGAN, JONES & SWEENEY, LLP DAVID L. PARDUE
Georgia Bar No. 561217
AARON I. SALTZMAN
Georgia Bar No. 470763
Counsel for Defendant NUGENE, Inc.

1180 Peachtree Street Northeast, Suite 3000
Atlanta, Georgia 30309
(404) 688-2600 (Telephone)
(404) 525-4347 (Fax)
Dpardue@og-law.com
Asaltzman@og-law.com